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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CITY OF HUNTINGTON BEACH, a California Charter City, and Municipal Corporation, the HUNTINGTON BEACH CITY COUNCIL, MAYOR OF HUNTINGTON BEACH, TONY STRICKLAND, and MAYOR PRO TEM OF HUNTINGTON BEACH, GRACEY VAN DER MARK.

Plaintiffs.

V.

GAVIN NEWSOM, in his official capacity as Governor of the State of California, and individually; GUSTAVO GELASQUEZ in his official capacity as Director of the State of California Department of Housing and Community Development, and individually; STATE LEGISLATURE; STATE OF CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT; SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS; and DOES 1 THROUGH 15.

Defendants.

Case No. 8:23-cv-00421-FWD (ADSx)

OPPOSITION BY CALIFORNIA STATE SENATE AND STATE ASSEMBLY (ERRONEOUSLY SUED AS THE STATE LEGISLATURE) TO PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER

Hearing date: None

Time: None

Courtroom: 10D (Honorable Judge Slaughter)

1 **I. INTRODUCTION**

2 Plaintiffs' application for a temporary restraining order ("TRO application")
3 contains no request for relief that is relevant to the California State Senate or State
4 Assembly ("Legislative Defendants").¹ (See TRO App. at p. 30.) However, if the
5 application is seeking such relief against the Legislative Defendants, the Legislative
6 Defendants oppose it. Legislative Defendants are not the proper parties to this
7 lawsuit, which seeks to enjoin the enforcement of laws that executive agencies, not
8 the Legislature, are charged with enforcing. There is no basis for relief against the
9 Legislative Defendants that this Court can order.

10 **II. STATEMENT OF FACTS**

11 Plaintiffs filed their complaint in this Court on March 9, 2023. The complaint
12 seeks declaratory relief and an injunction barring the enforcement of various
13 requirements of the Regional Housing Needs Allocation ("RHNA") laws, which are
14 codified within Article 10.6 (commencing with Section 65580) of Chapter 3 of
15 Division 1 of Title 7 of the Government Code. Among other things, Plaintiffs allege
16 that the RHNA laws compel the Huntington Beach City Council to endorse and to
17 vote in favor of developing high-density housing units within the City of Huntington
18 Beach ("City"), and that the RHNA laws as applied to the City violate various
19 provisions of the United States and California constitutions.

20 Plaintiffs filed the instant TRO application on March 14, 2023. The
21 application seeks an order temporarily enjoining Defendants from "enforcing any of
22 the fines or penalties enumerated within Cal. Gov. Code sections 65585 and
23 65589.5," because their enforcement may result, among other things, in a loss of the
24 City's permitting authority, potential exposure to lawsuits and monetary penalties,
25 and a loss of state funding. (TRO App. at p. 30.) Generally, Plaintiffs request an

27 ¹ The California State Senate and the California State Assembly are separate legal
28 entities (Cal. Const., Art. IV, §§ 1 and 2), and both parties hereby respond to
Plaintiffs' TRO application.

1 injunction preventing Defendants “from taking any enforcement or punitive action
2 against the City for any claimed or alleged violations of the RHNA laws.” (*Id.*)

3 Plaintiffs served the complaint and the TRO application on the State Assembly
4 on March 15, 2023. The State Senate also accepted service of the complaint and the
5 TRO application on March 17, 2023.

6 **III. LEGAL STANDARD**

7 The standard for issuing a temporary restraining order is “substantially
8 identical” to the standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales*
9 *Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n. 7 (9th Cir. 2001). A
10 plaintiff seeking a preliminary injunction must show (1) they are “likely to succeed
11 on the merits”; (2) they are “likely to suffer irreparable harm in the absence of
12 preliminary relief”; (3) that the “balance of equities tips in [their] favor”; and (4) that
13 an “injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555
14 U.S. 7, 20 (2008). Courts in the Ninth Circuit may consider the *Winter* factors on a
15 sliding scale and grant an injunction where the plaintiff raises “serious questions
16 going to the merits, and a balance of hardships that tips sharply toward the plaintiff”
17 if “the plaintiff also shows that there is a likelihood of irreparable injury and that the
18 injunction is in the public interest.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d
19 1127, 1134-35 (9th Cir. 2011).

20 **IV. ARGUMENT**

21 Plaintiffs’ TRO application does not satisfy the four-factor test stated in *Winter*
22 with respect to the Legislative Defendants, and thus this application should be denied
23 as to the Legislative Defendants. Fundamentally, Legislative Defendants are not
24 proper parties to this lawsuit and not proper parties against whom injunctive relief
25 can be granted for purposes of a temporary restraining order. Plaintiffs do not allege
26 – nor could they – that Legislative Defendants have any role in enforcing the RHNA
27 laws, including fines or penalties incurred pursuant to Sections 65585 and 65589.5 of
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1 the Government Code. There is no activity on the part of the Legislative Defendants
 2 that can be enjoined, and no relief that can be provided to the Plaintiffs involving the
 3 Legislative Defendants.

4 First, the Legislative Defendants are not the proper parties against whom relief
 5 from the RHNA laws can be granted. California courts recognize that the California
 6 State Legislature is not a proper party in a lawsuit challenging the constitutionality of
 7 California statutes, since this interest can be wholly vindicated by the state officers
 8 charged with administering the statute. *See Serrano v. Priest* 18 Cal.3d 728, 752
 9 (1976) (“[I]t is the general and long-established rule that in actions for declaratory
 10 and injunctive relief challenging the constitutionality of state statutes, state officers
 11 with statewide administrative functions under the challenged statute are the proper
 12 parties defendant”); *see also Templo v. State* 24 Cal.App.5th 730, 737 (2018).
 13 Indeed, the TRO application’s request for relief (TRO, p. 30) and the complaint’s
 14 request for relief (Complaint, pp. 55-58) do not identify any activity by the
 15 Legislative Defendants that this Court could enjoin. Even if Plaintiffs were
 16 requesting this Court to order Legislative Defendants to take a specific action such as
 17 to vote to amend the RHNA laws – which Plaintiffs are not – such an order would
 18 violate the separation of powers doctrine grounded in Article III, Section 3, of the
 19 California Constitution. *Schmidt v. Contra Costa County*, 693 F.3d 1122, 1138–39
 20 (9th Cir. 2012).

21 Second, granting the relief sought by the Plaintiffs, both in the instant TRO
 22 application and in the Plaintiff’s complaint, would violate basic principles of
 23 legislative immunity. Legislative immunity protects state legislators from civil
 24 liability when they are acting within the sphere of legitimate legislative activity.
 25 Under California law, legislative immunity derives from the separation of powers
 26 doctrine stemming from Article III, Section 3, of the California Constitution. *Id.*
 27 Under federal law, legislative immunity stems from the protections against liability
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1 set forth in the speech or debate clause in Section 6 of Article I of the United States
2 Constitution; the United States Supreme Court has also held that these protections
3 extend to state legislators by virtue of federal common law. *Tenney v. Brandhove*,
4 341 U.S. 367, 377 (1951) (“Legislators are immune from deterrents to the uninhibited
5 discharge of their legislative duty, not for their private indulgence but for the public
6 good.”). Thus, state legislators are entitled to “absolute common-law immunity
7 against civil suits for their legislative acts,” and this “[l]egislative immunity applies
8 to actions for damages and for injunctive relief.” *Schmidt, supra*, 693 F.3d at p.
9 1132; *Supreme Court of Va. v. Consumers Union of the U.S., Inc.*, 446 U.S. 719,
10 732–33 (1980). Nowhere in the TRO application or in the complaint have the
11 Plaintiffs alleged that the Legislative Defendants took any action except that which
12 was in the sphere of their legitimate legislative activity, i.e., enacting the RHNA
13 laws.

14 Third, and finally, the Eleventh Amendment bars suits in federal court for
15 damages or injunctive relief against the State. *Papasan v. Allain*, 478 U.S. 265, 276
16 (1986); *Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Harris*, 729 F.3d 937,
17 943 (9th Cir. 2013). Neither the complaint nor the TRO application contain an
18 allegation or a theory of liability that would circumvent Legislative Defendants’
19 Eleventh Amendment immunity.

20 For the above reasons, no component of the four-part test stated in *Winter* is
21 satisfied with respect to the Legislative Defendants. See *Winter, supra*, 555 U.S. at p.
22 20. Plaintiffs are unlikely to succeed on the merits of their complaint against the
23 Legislative Defendants because they are not proper parties to this lawsuit. No harm
24 will result in the absence of preliminary relief because there is no relief applicable to
25 the Legislative Defendants that this Court can provide. Finally, the balance of
26 equities does not tip in Plaintiffs’ favor and an injunction is not in the public interest,
27 because the Legislature has no role in enforcing or otherwise administering the
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1 RHNA laws that are the subject of Plaintiffs' complaint. Plaintiffs' claims can be
2 wholly addressed without the presence of Legislative Defendants in this lawsuit.

3 **V. CONCLUSION**

4 For the above reasons, Plaintiffs' application for a temporary restraining order
5 should be denied as to the Legislative Defendants.

6 Dated: March 20, 2023

7 Respectfully submitted,

8 CARA L. JENKINS
9 Legislative Counsel

10 /s/ Benjamin R. Herzberger
11 BENJAMIN R. HERZBERGER
12 Deputy Legislative Counsel